

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
<b>James George</b> O'Brien County	NO. 2012-AQ- 22 NO. 2012-SW-19

TO: James George  
3191 White Ave.  
Hartley, IA 51346

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and James George for the purpose of resolving violations pertaining to illegal solid waste disposal and open burning. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**  
Cindy Martens  
Iowa Department of Natural Resources  
Field Office No. 3  
1900 North Grand Ave, Suite E17  
Spencer, IA 51301  
Phone: 712-262-4177

**Relating to legal requirements:**  
Anne Preziosi, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-6243

**Payment of penalty to:**  
Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section

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455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. On March 28, 2012, an anonymous complaint was received by the DNR emergency response system at 7:38 a.m., stating that a neighbor was burning shingles and tires on Pierce Ave., about 3 to 4 miles north of highway 18 on the west side of the road. Environmental Specialist Senior, Cindy Martens, investigated the complaint, arriving at the site about 9:00 a.m. While driving to the site, Ms. Martens observed dark smoke hanging in the atmosphere to the south for several miles. Upon arrival, Ms. Martens observed hog buildings being torn down, a large smoldering burn pile on the southwest portion of the property, and an unburned pile situated next to it. The burned pile contained trees, wood, metal gating, shingles, radials from tires, many plastic hog feeders, and five tires. The unburned pile contained plastic feeders, metal gating, and a large amount of hog feed. Ms. Martens also observed another smoldering burn pit to the east which contained hoses, barrels, feeders, and two tires.

2. Mr. Don Getting spoke with Ms. Martens on site and indicated he owned the facility and had come from town upon learning of the black smoke. Mr. Getting inspected the burn piles with Ms. Martens and informed her that he leased the buildings being torn down. Mr. Getting stated that he had instructed the contractors on site to discontinue the burning. However, during the time the conversation between Mr. Getting and Ms. Martens took place, the contractors continued to haul plastic hog feeders to the burn pile until Mr. Getting told them to stop.

3. Mr. Getting indicated to Ms. Martens that a Mr. James George was overseeing the hog building demolition and remodeling.

4. Ms. Martens then spoke with Mr. George to make sure that he instructed any employees or contractors under his supervision to discontinue the burning.

5. Ms. Martens informed Mr. Getting that a Notice of Violation letter would be in the mail for illegal open burning and illegal open dumping on his property.

6. Later on March 28, 2012, Mr. George called Ms. Martens at her office and stated "that he would be taking full responsibility for the burning." Ms. Martens asked about the plastic feeders, and Mr. George indicated that he instructed that they be burned. Ms. Martens also asked about the tires, and Mr. George stated that he put one tire on the pile, but did not know how the others got there. At the end of the conversation, Mr. George again said, "I'll take responsibility, it's all my fault."

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**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions).

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The illegal open dumping of solid waste by Mr. George demonstrates non-compliance with this provision.

**V. ORDER**

THEREFORE, DNR orders and James George agrees to the following:

1. Mr. George shall pay a penalty of \$3,500.00 within 30 days of the date this order is signed by the Director.

2. Mr. George shall remove any and all solid waste remaining at the site by no later than July 15, 2012; Mr. George shall immediately discontinue allowing, causing or permitting improper open burning of solid waste at the site described in this order and at any other location in the State of Iowa; and Mr. George shall comply in the future with all state and local requirements regarding the prohibition against illegal open burning. By no later than July 15, 2012, Mr. George shall provide to DNR Field Office 3 receipts showing proper disposal or recycling of all solid waste materials from the site.

3. All existing and future solid waste materials must be reused, recycled, or taken to a sanitary disposal project authorized by the DNR.

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**VI. PENALTY**

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$3,500.00 is assessed by this administrative consent order. The penalty must be paid within 30 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B. 146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – James George saved time and money by burning the solid waste instead of properly disposing it. However, because the fire consumed most of the combustible materials, the total volume or tonnage of waste burned is unknown. Therefore, the economic benefit for failing to properly dispose of all materials is assessed at \$500.

Gravity of the Violation –The open burning and improper disposal of solid waste can release toxins that pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Black smoke was seen for several miles, which indicates particulate matter that exceeds the 40% opacity standard set forth in 567 Iowa Administrative Code 23.2(2)(d). This fire and related open dumping threatens the integrity of DNR's environmental programs. Therefore, \$1,500.00 is assessed for the gravity of the violations.

Culpability – Open burning and open dumping prohibitions have been in place for over 25 years. James George has intentionally allowed the open burning of prohibited wastes. James George has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that his conduct is subject to the DNR's rules. For these reasons, \$1,500.00 is assessed for culpability.

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**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of James George. For that reason, James George waives his rights to appeal this order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in this order. Failure to comply with this order may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.

Chuck Gipp  
Chuck Gipp, Director  
Iowa Department of Natural Resources

Dated this 30<sup>th</sup> day of  
July, 2012.

James George  
James George

Dated this 13 day of  
July, 2012.

O'Brien County Air Quality file; Anne Preziosi; DNR Field Office 3; VII.C.2

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